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In re Patent Application of
HINDERKS, MITJA V.
Appl No.: 08/477,703
Filed: June 07, 1995

MAILED

Paper No. 45

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Director's Office
Group 3700

**DECISION GRANTING
PETITION**
37 CFR 1.181

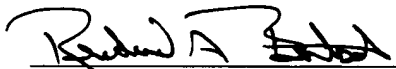
This application is before the Director of Technology Center 3700 for reconsideration of the non-entry of the after-final amendment, filed April 25, 2001. The petition was originally filed on December 27, 2001 and is considered pursuant to 37 CFR 1.181. No fee is required for this petition.

The petition is granted.

A review of the file indicates that a first final rejection was mailed on May 1, 1998. Since this application meets the requirements set forth in 37 CFR 1.129, applicant's submission filed October 30, 1998 was entered, the finality of the previous office was withdrawn, and prosecution continued. A second final rejection was mailed on October 25, 2000. Applicant filed a petition for a 3-month extension of time with a Notice of Appeal and an after-final amendment on April 25, 2001. The examiner issued an advisory action mailed June 13, 2001 indicating that the after-final amendment would not be entered. Although the petition argues that the amendment should have been entered after the final rejection, this argument is dismissed as moot in view of the fact that applicant filed a proper request under 37 CFR 1.129 on October 24, 2001 (with a petition for a 4-month extension of time) to have the amendment of April 25, 2001 entered.

On October 25, 2001, an "Appeal Brief" was filed. However, this filing argued the non-entry of the amendment of April 25, 2001. The argument was not proper as the non-entry of an amendment is not an appealable issue. The argument was also moot because applicant had filed a proper request on the previous day, which withdrew the finality of the previous office action and entered the amendment of April 25, 2001. Since the finality of the previous office action had been withdrawn and the amendment of April 25, 2001 entered, the application was due for an office action on the merits regarding the amended claims. The application was not ripe for appeal on October 25, 2001, so the Notice of the Defective Appeal Brief mailed November 30, 2001 is hereby vacated.

In summary, the request under 37 CFR 1.129 on October 24, 2001 was proper. The present status of the application is that the finality of the office action of October 25, 2000 is withdrawn and the amendment filed April 25, 2001 is entered. It is noted that a revocation of power of attorney and a change of address was filed on January 23, 2002. The application will be forwarded to the Technical Support Staff for processing of the revocation of power of attorney and a change of address prior to the mailing of this decision. The application will then be forwarded to the examiner for action in accordance with this decision and the provisions set forth in 37 CFR 1.129 and MPEP 706.07(g).



Richard A. Bertsch, Director
Technology Center 3700